

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5458 of 2000

And

SPECIAL CIVIL APPLICATION No 6083 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHIMA LAKHAN BHETARIA

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/09/2000

ORAL JUDGEMENT

#. Both these petitions are filed under Article 226 of

the Constitution of India alleging that the petitioners are detained because of the orders which can be termed as illegal, unconstitutional and especially in violation of the provisions of Article 22(5) of the Constitution of India. Both the petitioners have contended that orders of detention have been passed under ungenuine satisfaction and on extraneous consideration. The orders of detention in both these petitions have been passed by the District Magistrate and Detaining Authority, Junagadh in pursuance of the powers conferred by subsection 2 of section 3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980.

#. Mr.Lakhani, learned counsel appearing for the petitioners in both these petitions and Mr.Mankad, learned AGP have jointly submitted that, because of the similarity of the facts and the grounds pressed in service by the petitioners, these petitions can be heard and decided by the common order. Therefore, this consolidated order is passed.

#. The petitioners of both these petitions have challenged the orders of detention on various grounds reserving their rights to press into service any of the grounds. Mr.Lakhani for the sake of convenience and brevity has pressed into service only one ground to the effect that the petitioners are seriously prejudiced because of nonconsideration of the representations by the Union of India at the earliest as the same were not forwarded immediately by the authority, namely, jail authority. So, they cannot be placed under continuous detention and the orders of detention can be quashed and set aside.

#. So far as Special Civil Application No.5458 of 2000 is concerned, affidavits by the respective officers are filed and on perusal of these affidavits as well as averments made in the petition, it is undisputed that the order of detention was passed on 19.5.2000 and the same was served on that very day. Grounds for detention were communicated with the relevant papers to the petitioner on the date on which he was detained under the impugned order.

#. As the petitioner was aggrieved by the order of detention preferred four sets of the representation and they were to be sent to the various authorities including the District Magistrate, Junagadh, concerned authority in the State Government having its office at Sachivalaya, Gandhinagar and the Additional Secretary, Union of India,

Consumer Affairs Department, Room No.270, Krushi Bhavan, New Delhi. These representations were given to the Jail Superintendent on 6.6.2000, but unfortunately for the petitioner, the Jail Authority returned the representation which was required to be sent to the Secretary, Union of India, New Delhi by letter dated 7.6.2000. According to the Jail Superintendent, District Jail, Surat, the same was returned to the petitioner because the representation was in vernacular Gujarati. The petitioner was instructed that, he should give English translation or the representation in English, only then it would be possible to forward the same to the concerned authority. According to Mr.Lakhani, this has seriously prejudiced the case of the petitioner and the scope of the earliest consideration of the representation by the authority who is otherwise authorised to revoke the order of detention was not able to apply its mind. These sets of facts has resulted into illegal continuous detention of the petitioner, and therefore, the order of detention is required to be quashed and set aside on this sole ground.

#. In response to the query raised by this court, Mr.Lakhani has placed reliance on case decided upon similarly situated facts by this court vide order dated 21.7.2000 while dealing with Special Civil Application No.5460 of 2000 and the copy of the judgment of this court (Coram: R.P.Dholakia,J) has been given to this court. On perusal of the judgment, I am satisfied that the facts of the case decided by this court (Coram: R.P.Dholakia,J) are squarely similar to the facts of this case and the petitioner can place the reliance on the verdict of this court in the said case. I am told that, this court (Coram: D.P.Buch,J) while dealing with Special Civil Application No.6077 of 2000 has also decided the similar sets of facts in the identical manner, and therefore, the order of continuous detention against the petitioner should be quashed and set aside and he should be set forth at liberty forthwith.

#. So far as Special Civil Application No.6083 of 2000 is concerned, the order of detention is passed on 21.5.2000. It was executed on the same day and the grounds for detention were conveyed to the petitioner on the date on which he was detained. Representation prepared by the petitioner was tendered before the Superintendent, District Jail, Surat on 16.6.2000, but the representation which was required to be forwarded to the Secretary, Union of India, New Delhi was returned to the petitioner on 19.6.2000 with the similar remarks as they were in the letter dated 7.6.2000 written by the

Jail Superintendent with directions to tender the representation in English language. According to Mr.Lakhani, thus, the facts of this petition are identical to the facts of Special Civil Application No.5458 of 2000.

#. As observed earlier, the arguments referred hereinabove can help this petitioner also and therefore the order of detention deserves to be quashed and set aside only on this ground which has been pressed into service by Mr.Y.S.Lakhani, the learned counsel.

#. I am in complete agreement that, nonforwarding of the representations to the Secretary, Union of India, New Delhi by the jail authority has created the situation which is prejudicial to the rights of the petitioners and its resultant effect has violated the rights of the detenu in light of the provisions of Article 22(5) of the Constitution of India. The orders of continuous detention cannot survive and shall have to be quashed and set aside.

##. Ms.Davawala, learned counsel appearing for the Union of India has tendered on record the counter affidavits and she has nothing to add as the grievances raised by the petitioners in these petitions are mainly against the State of Gujarat and the Detaining Authority.

##. In nutshell, the petitioners can succeed and I am incline to allow these petitions on the very ground without going into the merits of other grounds pleaded by the petitioners. The petitions shall have to be allowed, therefore, the same are allowed. Impugned orders of detention dated 19.5.2000 and 21.5.2000 passed by the Detaining Authority, Junagadh are quashed and set aside. The petitioners should be set forth at liberty forthwith if they are not required otherwise.

(C.K.Buch,J)

(pathan)